

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LANDMARK LEGAL FOUNDATION

Plaintiff,

v.

**ENVIRONMENTAL PROTECTION
AGENCY,**

Defendant.

Civil Action No. 12-1726 (RCL)

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Environmental Protection Agency (EPA) hereby files this Notice of Supplementary Authority to inform the Court of a recent change in federal records law. On November 26, 2014, the President signed into law the Presidential and Federal Records Act Amendments of 2014, Pub. L. 113-187, 128 Stat. 2003 (Nov. 26, 2014). The law amends the Federal Records Act, which governs the preservation, storage, and management of federal records by federal agencies.

The new law clarifies the responsibilities of federal government employees when using non-official electronic messaging accounts (*e.g.*, personal email systems) for government business. Specifically, Section 10 of the Presidential and Federal Records Act Amendments of 2014, amends 44 U.S.C. § 2911 of the federal code to read:

Sec. 2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) In General- An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee--

(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

Under the new law, records created or sent on a non-official electronic messaging system would be required to be forwarded to an official government account either at the time of creation or transmission of the federal record, or no later than 20 days after creation or transmission. The law further provides that the intentional violation of the above-noted prohibition, as determined by the appropriate supervisor, shall be a basis for disciplinary action of the employee as defined by existing laws and regulations. *See* 44 U.S.C. § 2911 (as amended).

As explained in Defendant's Opposition to Plaintiff's Motion for Spoliation Sanctions, the Agency's existing records policy instructs employees that official business should first and foremost be conducted on Agency systems, and that when, in limited instances, this does not occur, employees should either copy their own account at the time of transmission or forward the record to an official government account after transmission. The new law essentially codifies the Agency's existing records policy, while including an additional requirement that the employee copy or forward the record within 20 days of transmission of the record. The EPA is in the process of updating its existing records policy to reflect this requirement. The EPA also intends to update employee training and guidance to address the requirements of the new law.

